



**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the file compiled to date and the parties' arguments, the Board finds that the August 5, 2003 Order should be affirmed.

This claim hinges upon claimant's credibility. Claimant testified that on the date of the alleged accident he advised respondent's plant manager, Timothy M. Murphy, that his back was hurting from stacking mineral blocks. But Mr. Murphy disputes that testimony.

Judge Frobish had the opportunity to observe both claimant and Mr. Murphy testify and assess their credibility. The record also contains evidence other than Mr. Murphy's testimony that calls claimant's credibility into question, including the convictions for crimes involving dishonesty. And when considering all of the evidence presented at the preliminary hearing, the Judge determined that claimant had failed to prove that he provided respondent with timely notice of the back injury. The Board concurs.

Injured workers must prove the various conditions upon which their rights to receive compensation depend.<sup>1</sup> Because claimant does not contend that he had just cause or excuse to delay giving respondent notice, claimant was required to prove that he informed respondent of a work-related accident or injury within 10 days of the incident, which he has failed to do.<sup>2</sup> Consequently, the request for benefits must be denied.

As provided by the Workers Compensation Act, preliminary hearing findings are not binding but subject to modification upon a full hearing of the claim or at another preliminary hearing.<sup>3</sup>

**WHEREFORE**, the Board affirms the August 5, 2003 Order.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September 2003.

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BOARD MEMBER

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<sup>1</sup> K.S.A. 44-501(a).

<sup>2</sup> See K.S.A. 44-520.

<sup>3</sup> K.S.A. 44-534a(a)(2).

c: Patrick C. Smith, Attorney for Claimant  
Eric T. Lanham, Attorney for Respondent and its Insurance Carrier  
Jon L. Frobish, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director